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No.

In The

Supreme Court of the United States

October Term, 1983

PATRICK DIXON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the indictment should have been dismissed for deliberate and flagrant acts of prosecutorial misconduct.

2. Whether Count I of the indictment should have been dismissed as being duplicitious.

3. Whether the admission of evidence improperly seized during an earlier arrest violated petitioner's rights under the Fourth Amendment of the United States Constitution.

4. Whether the admission of hearsay testimony relating to a drug transaction that occurred after the conspiracy ended constituted prejudicial error.

5. Whether the lower court improperly charged the jury that they could find the petitioner guilty of a defense not charged in the indictment.

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APPENDIX

Judgment Order of the United States Court of Appeals for the Third Circuit 1a

Indictment 3a

No.

In The

Supreme Court of the United States

October Term, 1983

PATRICK DIXON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioner Patrick Dixon respectfully prays to this Honorable Court that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, which affirmed his judgment of conviction entered upon a jury verdict of guilty.

OPINION BELOW

The judgment order of the United States Court of Appeals for the Third Circuit was entered on July 27, 1983 and is annexed

hereto (Appendix, 1a). The instant petition for a writ of certiorari was filed within sixty (60) days of that date.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Section 1254(a) of Title 28 of the United States Code, 28 U.S.C. Section 1254(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 841(a) of Title 21 of the United States Code, 21 U.S.C. Section 841(a), which provides:

> (a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally —
>
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or
>
> (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Section 846 of Title 21 of the United States Code, 21 U.S.C. Section 846, which provides:

> Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

United States Constitution, Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

A. Procedural History

On June 16, 1982, petitioner was found guilty of conspriracy to manufacture and distribute methamphetamine and to distribute and possess phenyl-2-propanone (p-2-p), in violation of Title 21, United States Code, Section 841, and with the unlawful attempt to possess with the intent to distribute p-2-p, in violation of Title 21, United States Code, Section 846. Petitioner thereafter filed motions for judgment of acquittal and for a new trial, which motions were denied by the District Court.

A final judgment of sentence was imposed upon petitioner on July 30, 1982, and petitioner thereafter appealed from that judgment of sentence to the Court of Appeals.

On July 27, 1983, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court.

B. Concise Statement of Facts

Petitioner Patrick Dixon was one of thirty-eight persons arrested as a result of an undercover scam operation conducted by Ronald Raitan, the Federal Bureau of Investigation and the Drug Enforcement Agency. Mr. Dixon had been an unskilled laborer and truck driver all of his adult life. He became acquainted with Ronald Raitan when Mr. Raitan took over a trucking firm that employed Dixon. He worked for Raitan as a truck driver and became friendly with Raitan over a period of time.

Raitan used Dixon to pick up and deliver certain chemical substances which were not, prior to February 1980, controlled substances. He never identified to Dixon the true nature of the substances, but always assured him that there was nothing illegal about what Dixon was being asked to do.

On July 31, 1981, while Raitan was working under the full direction and control of the federal authorities, he instructed Dixon to come to his apartment with some money and he gave Dixon a substance which Raitan described as p-2-p, but that was not p-2-p, but some doctored or adulterated substance manufactured by federal authorities.

Dixon was convicted of conspiracy to manufacture and distribute methamphetamine, and to distribute and to possess p-2-p and with the unlawful attempting to possess p-2-p.

REASONS FOR GRANTING THE WRIT

I.

Preliminary Statement.

This Court's Rule 17 considerations here applicable are that the District Court and the Court of Appeals have so far departed from the usual course of judicial proceedings as to call for an exercise of this Court's supervisory power and have rendered a decision on important questions of federal law in conflict with the decisions of other federal courts of appeals.

The issues decided by the courts below, *i.e.*, (1) whether prosecutorial misconduct of the degree which occurred in this case warrants dismissal of the indictment, (2) whether Count I of the indictment should have been dismissed as being duplicitious, (3) whether evidence illegally seized during an earlier arrest is admissible at a subsequent trial, (4) whether hearsay testimony relating to a drug transaction occurring after the conspiracy charge has ended is admissible, and (5) whether evidence can be admitted and the jury charged as to offenses not charged in the indictment, are important questions of federal law that go to the integrity of the judicial process, thereby justifying the exercise of this Court's supervisory powers. For these reasons, a writ of certiorari should issue to review the judgment of the Court of Appeals.

II.

The Court should take this opportunity to settle the issue of the requisite level of prosecutorial misconduct which mandates dismissal of an indictment.

Both petitioner's indictment and conviction were obtained upon the reported activity of Ronald Raitan, who has described

himself as the largest and at one time the only distributor of p-2-p. Mr. Raitan's testimony shows him to be an unscrupulous businessman who rose to his position as an exclusive distributor of p-2-p through his knowledge and application of the principles of international commerce.

Mr. Raitan became aware of the fact that his drug-related activities had come to the attention of law enforcement when he was arrested during the distribution of cocaine. In order to escape conviction, he paid a government witness to perjure herself. He admitted using $4,000 to $5,000 worth of cocaine a week.

By the end of 1980, he approached the Drug Enforcement Administration and tried to make a deal. They refused because they regarded him as a major drug dealer. He then approached the Philadelphia Police Department in January, 1981 and began what he called "cooperation". Through his contacts with the Philadelphia Police Department, he was placed in touch with the FBI and this time, promised to cooperate in the arrests of organized crime figures. On April 2, 1981, he began to cooperate with the Federal Bureau of Investigation.

In spite of his attempts to gain government favor by cooperating with the FBI, Raitan continued his narcotics trafficking activities. By his own estimate, he sold approximately 100 gallons of p-2-p after he began to cooperate with the FBI. The money from his drug deals was invested both in the United States and overseas; this amount is estimated at approximately $2,000,000. His investments in this country alone were earning him $21,000 a month in interest.

Raitan paid no income taxes for the years 1979 or 1980 when he was accumulating this vast fortune. When he realized that all his assets were subject to confiscations since they came from illegal drug sales, his agreement with the federal government was that

he would only pay taxes upon them and that they would not be confiscated.

Not only did the government agree with Mr. Raitan that he could keep his ill-gotten goods, but they further agreed that there would be no criminal penalty for failure to file income taxes.

During the time that Mr. Raitan was in the process of negotiating this deal with the federal government, not only was he continuing to make money by dealing in drugs, but he began to deal with agents of the federal government and members of the United States Attorney's Office. He made a loan to an Assistant United States Attorney; he sold his Florida condominium to a member of the FBI at a discount. He sold various articles of furniture and furnishings to members of the FBI. He gave a gun to his contact on the Philadelphia Police Department. The lower court found, after a hearing, that none of these people were directly involved with recommending the deal for Mr. Raitan. The final recommendation of the government was that Mr. Raitan was to undergo an additional one and one-half years imprisonment, on top of a five-year sentence that he already had. This meant that he would serve a total prison sentence of six and one-half years for his part in the distribution of 20,000 pounds of methamphetamine. The government also agreed that they would not oppose his application for earlier parole nor would they have any objection to him receiving a passport and leaving the country whenever he is eventually released from prison.

Originally, the Drug Enforcement Agency was not interested in information which Mr. Raitan could give them about people connected with him in distributing p-2-p because they regarded him as a major drug dealer. The FBI became interested when he gave up two alleged organized crime figures. However, these two people in and of themselves were not sufficient to justify Mr. Raitan's deal and after he signed his agreement on June 11,

he began to assemble incriminating information against people who had worked for him or befriended him over the years. A total of thirty-eight defendants were arrested and eventually stood trial. But with few exceptions, these were people who had befriended Ronald Raitan, were in love with him, had worked for him or whose paths had crossed him at some point. With few exceptions, none of these individuals had before or since had any connection with drugs. Two of them were his former girlfriends. Patrick Dixon, petitioner, was a truck driver employed by Milestone Trucking Company, which Raitan allegedly took over. He became involved by making pick-ups and deliveries for Ronald Raitan.

Petitioner was one of those individuals that Raitan gave up to the federal government in order to fill out the number of people they had arrested as a result of Ronald Raitan's cooperation, thereby justifying the deal made to Raitan.

The government used Ronald Raitan and Ronald Raitan used the government. Petitioner was not in the drug business independent of his contact with Mr. Raitan. The specific offenses of which he has been found guilty occurred at a period of time when Raitan was under the complete direction and dominance of the government. This arrest and a vast majority of the other arrests were made solely to justify an unconscionable arrangement which was made between the federal government and Ronald Raitan which benefited no one but Ronald Raitan. It is prosecutorial misconduct at its highest level. It transcends the fine line between investigation and manufactured crime in order to justify unconstitutional means.

The Court of Appeals for the Third Circuit has recognized two classes of cases in which the court may properly exercise its supervisory powers and dismiss an indictment in response to prosecutorial misconduct. First, dismissal of the indictment is

proper where the defendant can show that prosecutorial misconduct has caused him "actual prejudice." *United States v. Serubo*, 604 F.2d 807, 817 (3rd Cir. 1979); *United States v. Riccobene*, 451 F.2d 586, 587 (3rd Cir. 1971); *United States v. Bruzgo*, 373 F.2d 383, 386-387 (3rd Cir. 1967).

Second,

> . . . (d)ismissal of the indictment may be proper even where no actual prejudice has been shown, if there is evidence that the challenged activity was something other than an isolated incident unmotivated by sinister ends, or that the type of misconduct challenged has become 'entranched and flagrant' in the Circuit. *United States v. Serubo, supra* at 817 quoting *United States v. Birdman*, 602 F.2d 547, 559 (3rd Cir. 1979).

The view that dismissal of an indictment in the exercise of the supervisory power of the court may be an appropriate remedy to correct flagrant or persistent abuse, despite the absence of prejudice to the defendant, is also accepted in other circuits. *United States v. Samango*, 607 F.2d 871 (9th Cir. 1979); *United States v. Jacobs*, 547 F.2d 772 (2nd Cir. 1976), *cert. dismissed*, 436 U.S. 431 (1978); *United States v. Henderson*, 525 F.2d 274 (5th Cir. 1975); *United States v. Basurto*, 497 F.2d 781 (9th Cir. 1974).

In view of the extreme and flagrant misconduct on the part of the prosecution in manufacturing a crime in order to obtain additional defendants in which to justify Mr. Raitan's deal with the government, it is respectfully submitted that the government's conduct in this case demands review under this Court's supervisory powers.

Because of the potentially far-reaching impact adopted by the courts below upon the integrity of the judicial process, this

Court should grant the instant petition and review the judgment of the Court of Appeals.

III.

The decisions of the courts below affirming the conviction under Count I of the indictment represent such a radical departure from established case law which prohibits duplicitious counts in indictments, so as to warrant the exercise of the supervisory power of this Court.

Count I of the indictment (4a) charges seven defendants with conspiring "to manufacture and to distribute methamphetamine, and to distribute and possess with the intent to distribute phenyl-2-propanone (p-2-p), Schedule II non-narcotic drug-controlled substances." Both chemical substances are described in the indictment as "non-narcotic drug-controlled substances," although from the beginning of the indictment in May of 1978 through February 1980, p-2-p was *not* a controlled substance.

Objection and argument were made at the court on the opening day of trial to dismiss Count I for duplicity. Counsel urged that the indictment had two distinct conspiracies, one of which was to manufacture and distribute methamphetamine and the other was to distribute and possess with intent to distribute p-2-p. In the alternative, the court was asked to force the government to elect. The court denied all relief.

Rule 8(a) of the Federal Rules of Criminal Procedure requires that two or more offenses, if contained in the same indictment, be charged "in a separate count for each offense." Duplicity is the joining of two or more separate offenses in the same count in contravention of that Rule. *United States v. Starks*, 515 F.2d 112, 116 (3rd Cir. 1975); *United States v. Zolli*, 51 F.R.D. 522,

526 (F.D.N.Y. 1970); *United States v. Kearney*, 451 F. Supp. 33 (S.D.N.Y. 1978).

It is respectfully submitted that the indictment in this case is indeed duplicitious in that it charges two distinct conspiracies, and as such, should never have been submitted to the jury. 1 Wright, *Federal Practice and Procedure: Criminal 2d*, Section 142.

The prohibition against duplicity has its constitutional basis in the Sixth Amendment's guarantee that an accused be adequately "informed of the nature and cause of the accusation" and the Fifth Amendment's prohibition against double jeopardy. *United States v. Zeidman*, 540 F.2d 314, 316 (7th Cir. 1976); *United States v. Tanner*, 471 F.2d 128, 139 (7th Cir.), *cert. denied*, 409 U.S. 949 (1972). The decisions below, therefore, represent a radical break from the consistent line of case law.

This departure warrants the exercise of this Court's supervisory power, and, accordingly, a writ of certiorari should issue to review the judgment of the Court of Appeals.

IV.

The decisions of the courts below affirming the conviction based upon the admission of evidence illegally seized from petitioner during a prior arrest, wherein the charges were subsequently dismissed, represent such a radical departure from the established decisions of this Court and other courts, so as to warrant the exercise of the supervisory power of the Court.

Petitioner was arrested without a warrant in February of 1980 and certain books, papers and personal records were illegally seized without a warrant at that time. The charges against petitioner were subsequently withdrawn by the government.

In February of 1980, petitioner had driven to an airport in Harrisburg and picked up a shipment which was purported to be acetone nail polish remover. Actually, this was a box containing several one-gallon drums which had been seized by and tampered with by federal agents at the Harrisburg airport before they were turned over to petitioner. The agents followed petitioner from Harrisburg to Philadelphia and arrested him outside of a bar. At that time, they seized the drums, all of which had been filled with water by the agents after they emptied out their true contents. At the time of this arrest, certain personal books and records which were not contraband were seized without the benefit of a warrant and were never returned subsequent to the dismissal of the charges. During the trial the court took evidence upon the defendant's motion to suppress which was subsequently denied.

In the absence of exigent circumstances, a warrant is normally a prerequisite to a search. *Arkansas v. Sanders*, 442 U.S. 753 (1979); *Torres v. Commonwealth of Puerto Rico*, 442 U.S. 465, 471 (1979); *United States v. Chadwick*, 443 U.S. 1.

The "automobile exception" from the warrant requirement, as set forth in *Carroll v. United States*, 267 U.S. 132, and its progeny, is not extended to the warrantless search of an individual's personal belongings merely because they were located in an automobile. *Robbins v. California*, 101 S.Ct. 2841 (1981); *Arkansas v. Sanders, supra*. The warrantless search of one's personal belongings merely because of its location in an automobile is not justified:

> Where - as in the present case - the police, without endangering themselves or risking loss of the evidence, lawfully have detained one suspected of criminal activity and secured his suitcase, they should delay the search thereof until after judicial approval has been obtained. In this way, the

> constitutional rights of suspects to prior judicial review of searches will be fully litigated. *Arkansas v. Sanders, ibid.* at 766.

Although this Court in *New York v. Belton*, 101 S. Ct. 2860 (1981) held that objects located inside a car's passenger compartment that are "within the arrestee's immediate control", may be searched incident to a lawful custodial arrest, 101 S. Ct. at 2864-2865, the instant case is inapposite to *Belton*. In this case, the items seized from petitioner were not in the passenger compartment of the van, but, rather, were contained in the rear of the van, not within petitioner's immediate reach. The United States Court of Appeals for the District of Columbia in interpreting *Belton* held:

> . . .Belton covers cases. . .in which the search is contemporaneous with a lawful custodial arrest, and is confined to containers in hand or within reach when the arrest occurs. *United States v. Brown*, 671 F.2d 585, 587 (D.C. Cir. 1982); *Vance v. United States*, 676 F.2d 183 (5th Cir. 1982).

The decision below, therefore, represents a radical break from consistent line of case law.

This departure warrants the exercise of this Court's supervisory power, and, accordingly, a writ of certiorari should issue to review the judgment of the Court of Appeals.

V.

The decisions of the courts below affirming the conviction based upon the admission of hearsay testimony relating to transactions occuring subsequent to the termination of the conspiracy, represent such a radical departure from established case law so as to warrant the exercise of the supervisory power of this Court.

It is well-settled law that prior to the admission of an out-of-court statement by a co-conspirator under Fed. R. Evid. 801(d)(2)(e), three requirements must be satisfied. First, there must be independent evidence establishing that the person against whom this statement is offered participated in the conspiracy. Second, the statement must have been in furtherance of the conspiracy. Third, the conspirator's statement must have been made during the life of the conspiracy. *United States v. Nixon,* 418 U.S. 683, 701 (1974); *United States v. Perez,* 658 F.2d 654, 658 (9th Cir. 1981).

In this case, Agent Dreiwitz testified about a conversation which occurred at a meeting between himself, Ronald Raitan, John Abramson and Jerry Lavin. Lavin was a charged co-defendant in the instant indictment, but pled guilty and did not stand trial. This conversation occurred on July 1, 1981.

Ronald Raitan signed an agreement with the federal government on June 11, 1981 and from that point forward, operated under their direction and under their protection. Obviously, Ronald Raitan on July 1, 1981, was no longer a member of the conspiracy.

Over objection, Agent Dreiwitz was permitted to testify that he heard defendant Lavin say that Lavin had obtained p-2-p from Dixon. The government never showed any contact or independent

conspiracy between Lavin and Dixon. The entire conspiracy, such as it was, contained Ronald Raitan at its hub. The hub had obviously been removed on July 1, 1981, by Raitan's cooperation with the federal government and there was absolutely no evidence to show that any conspiracy ever existed between Dixon and Lavin which could have survived the removal of Ronald Raitan.

Before a statement can be admitted under the co-conspirator exception to the hearsay rule, there must exist substantial independent evidence of a conspiracy. The court must find that ". . . the prosecution has shown by a *preponderance of the evidence* independent of the statement itself (1) that a conspiracy existed, (2) that the co-conspirator and the defendant against whom the conspirator's statement is offered were members of the conspiracy, and (3) that the statement was made during the course and in furtherance of the conspiracy." *United States v. Rodriguez,* 689 F.2d 516, 518 (5th Cir. 1982), citing *United States v. James,* 590 F.2d 575, 582 (5th Cir. 1979).

In this case, there was no proof that a conspiracy came into being between petitioner and Lavin, or which contained petitioner and Lavin as two of its members at any time after Raitan left the conspiracy.

Moreover, the statements which Agent Dreiwitz overheard, even assuming *arguendo,* that the existence of a conspiracy had been proven, were not "in furtherance of the conspiracy." In *United States v. Traylor,* 656 F.2d 1326 (9th Cir. 1981) the court held that statements allegedly made by one conspirator, which concerned activities of the conspiracy including future plans, but which were not made in an effort to induce listener to join the conspiracy and did not assist conspirators in achieving their objectives, were not in furtherance of the conspiracy and were therefore inadmissible against conspirator. *Traylor, supra* at 1333, citing *United States v. Fielding,* 645 F.2d 719, 726-727 (9th Cir.

1981), quoting *United States v. Eubanks,* 591 F.2d 513, 520 (9th Cir. 1979). The statement by defendant Lavin to Agent Dreiwitz were mere "conversation" or "idle chatter", which were not in furtherance of any conspiracy, and, therefore, are not admissible under the co-conspirator exception to the hearsay rule. *United States v. Traylor, supra* at 1332; *United States v. Lieberman,* 637 F.2d 95 (2nd Cir. 1980); *United States v. Moore,* 522 F.2d 1068, 1077 (9th Cir. 1975), *cert. denied,* 423 U.S. 1049 (1976).

Furthermore, in view of the fact that any conspiracy would have ended upon the removal of Ronald Raitan, the statements at issue occurred after termination of the conspiracy and, therefore, were inadmissible. *United States v. Tombrello,* 666 F.2d 485, 490 (11th Cir. 1982), *cert. denied,* 102 S. Ct. 2279; *United States v. Boyd,* 595 F.2d 120 (3rd Cir. 1978).

The decisions below, therefore, represent a significant break from the consistent line of case law which warrants the exercise of this Court's supervisory power. Accordingly, a writ of certiorari should issue to review the judgment of the Circuit Court of Appeals.

VI.

The decisions of the courts below affirming the conviction based upon an improper instruction to the jury wherein the jury was instructed that the defendant could be found guilty of an offense not charged in the indictment, represent such a radical departure from the established case law so as to warrant the exercise of the supervisory power of this Court.

Count I of the indictment charges seven defendants with conspiracy "to manufacture and distribute methamphetamine, and to distribute and possess with the intent to distribute phenyl-2-propanone ("p-2-p"), Schedule II, Non-Narcotic Drug

Controlled Substances. . . ." At the time of the conspiracy and the proof at trial indicated that the alleged conspiracy began on or about May of 1978 to the date of the indictment.

Until February of 1980, phenyl-2-propanone (p-2-p) was not a controlled substance. The government took the position that its possession was completely legal unless it was possessed with knowledge that it was to be used in the manufacture of methamphetamine. Possession with knowledge that it was to be used in methamphetamine is not charged in the indictment.

Nonetheless, the court charged that both methamphetamine and p-2-p were controlled substances and noted that before February of 1980, a guilty verdict could be supported under the conspiracy count if an individual knew that p-2-p was to be used in the manufacture of methamphetamines. An exception was made but the court refused to alter its charge.

An indictment cannot be amended, altered or broadened by any means, including an instruction to the jury. *United States v. Pazsint*, 703 F.2d 420 (9th Cir. 1983); *United States v. Bizzard*, 615 F.2d 1080 (5th Cir.), *on remand*, 493 F. Supp. 1084, *aff'd*, 674 F.2d 1382 (1980). The decisions below, therefore, represent a radical break from consistent line of case law.

CONCLUSION

This departure warrants the exercise of this Court's supervisory power and, accordingly, a writ of certiorari should issue to review the judgment of the Court of Appeals.

Respectfully submitted,

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APPENDIX

JUDGMENT ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 82-1473

UNITED STATES OF AMERICA

v.

PATRICK DIXON,

Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania
(Crim. No. 82-00014-03)
(Honorable Clarence C. Newcomer)

Argued July 21, 1983

Before: ADAMS and HIGGINBOTHAM, *Circuit Judges*, and TEITELBAUM, *District Judge**

After considering all contentions raised by appellant, namely, that (1) this indictment should be dismissed because of prosecutorial misconduct; (2) the Lower Court erred in failing to find Count One of the indictment duplicitous; (3) the Lower Court erred in failing to suppress evidence improperly seized from the defendant in an earlier arrest; (4) the Lower Court improperly

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* Honorable Hubert I. Teitelbaum, United States District Court for the Western District of Pennsylvania, sitting by designation.

admitted hearsay testimony relating to a drug transaction that occurred after the conspiracy had ended; (5) the Lower Court improperly admitted testimony by the Government's main witness, Ronald Raiton, and improperly restricted his cross-examination; and (6) the Lower Court improperly charged the jury that they could find the defendant guilty of an offense not charged in the indictment, it is

ADJUDGED AND ORDERED that the judgmeht of the district court be and is hereby affirmed.

BY THE COURT,

s/ Alan M. Adams

Circuit Judge

ATTEST:

s/ Sally Mrvos

Sally Mrvos, Clerk

DATED: JUL 27 1983

INDICTMENT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRIMINAL NO.

DATE FILED:

VIOLATIONS: 21 U.S.C. §846
(Conspiracy - 1 count)
21 U.S.C. §846
(Attempt to possess with intent to distribute P2P - 4 counts)
18 U.S.C. §2
(Aiding and Abetting - 3 counts)

UNITED STATES OF AMERICA

v.

RICHARD FROST, PHILIP MILESTONE, PATRICK DIXON, ROBERT C. ("R.C.") HARTLEY, GERALD LAVIN, MITCHELL LIEBERMAN ALEXANDER HARTZEL

COUNT ONE

THE GRAND JURY CHARGES:

1. That from in or about May, 1978 to on or about the date of this Indictment, in the Eastern District of Pennsylvania, and elsewhere

Indictment

RICHARD FROST
PHILIP MILESTONE
PATRICK DIXON
ROBERT C. ("R.C.") HARTLEY
GERALD LAVIN
MITCHELL LIEBERMAN
ALEXANDER HARTZEL

knowingly and intentionally did unlawfully combine, conspire, confederate and agree together and with each other, and with other persons known and unknown to the Grand Jury, to manufacture and distribute methamphetamine, and to distribute and possess with the intent to distribute phenyl-2-propanone (P2P), Schedule II non-narcotic drug controlled substances, in violation of Title 21, United States Code, Section 841.

2. It was a part of the plan and purpose of the conspiracy that defendant, Joseph DiSantis, Jr., with the assistance of Joseph DiSantis, Sr., was in partnership with Ronald Raiton, and was a financier, planner, manager and organizer in obtaining, manufacturing and distributing methamphetamine, and in obtaining and distributing P2P.

3. It was a further part of the plan and purpose of the conspiracy that defendants, David Gomberg a/k/a David Aion and Albert Spielvogel a/k/a Al Vogel and Albert McCarter, and others would purchase, at chemical companies in the United States, laboratory apparatus and chemicals, including P2P, utilized in the manufacture of methamphetamine.

4. It was a further part of the plan and purpose of the conspiracy that defendants, David Gomberg a/k/a David Aion, Albert Spielvogel a/k/a Al Vogel and Albert McCarter, RICHARD FROST, Michelle D'Amico, Ralph DiFronzo, and

others would pick-up and deliver chemicals and equipment for the manufacture of methamphetamine.

5. It was a further part of the plan and purpose of the conspiracy that Ronald Raiton and defendant, Joseph DiSantis, Jr., in partnership with defendants, Eugene Cella and Ivan Stevens, would and did obtain P2P from other countries, including England and France, and would and did cause that P2P to be shipped to and smuggled into the United States with the aid and assistance of David Gomberg, Lawrence Genaur, Jerome Berman, Jose Gonzales-Suvillaga, Linda Kravits, PHILIP MILESTONE, RICHARD FROST, Michelle D'Amico, and others.

5(a). It was a further part of the plan and purpose of the conspiracy that this P2P would be smuggled into the United States through ports of entry in Florida.

6. It was a further part of the plan and purpose of the conspiracy that Ronald Raiton and defendant, Joseph DiSantis, Jr., in partnership with Harold Levy and Theodore Karrys would obtain P2P from other countries, including France, West Germany, and England, and would and did cause that P2P to be shipped to and smuggled into the United States through Canada with the aid and assistance of David Gomberg, a/k/a David Aion, Michelle D'Amico, Ralph DiFronzo and others.

6(a). It was a further part of the plan and purpose of the conspiracy that this P2P would be ordered by LK forwarding, a partnership formed by Harold Levy and Theodore Karrys and would be smuggled into the United States through ports of entry in New York.

7. It was a further part of the plan and purpose of the conspiracy that Ronald Raiton and defendant Joseph DiSantis,

Jr., with the aid and assistance of Albert Spielvogel, a/k/a Al Vogel and Albert McCarter, and others started, set-up, and operated Toro International Trading, a Canadian company, for the purpose of importing P2P from abroad to the United States.

7(a). It was a further part of the plan and purpose of the conspiracy that Albert Spielvogel, a/k/a Al Vogel and Albert McCarter would purchase P2P from companies in France, West Germany and England, and order the shipment of the P2P to Nassau, the Bahamas. In the Bahamas, the P2P was stored in a warehouse known as P.D.Q. Packaging.

7(b). It was a further part of the plan and purpose of the conspiracy that some of the P2P would be shipped from the Bahamas to ports of entry in Florida and, thereafter transported to the Philadelphia area by Albert Spielvogel, a/k/a Al Vogel and Albert McCarter, PATRICK DIXON, RICHARD FROST, GERALD LAVIN, Linda Kravitz, Michelle D'Amico, and others.

7(c). It was a further part of the plan and purpose of the conspiracy that some of the P2P imported into the United States would arrive by airplane at Trenton and Newark, New Jersey, Baltimore, Maryland, Wilmington, Delaware and Harrisburg and Pittsburgh, Pennsylvania and that PATRICK DIXON and others would pick up the P2P as an alleged employee of Paramount Delivery Service or Milestone Trucking Company and transport the P2P to the Philadelphia area.

8. It was a further part of the plan and purpose of the conspiracy that Ronald Raiton, as the owner of a boat, "Antares" in Fort Lauderdale, Florida, financed various shipments of P2P into the United States.

8(a). It was a further part of the plan and purpose of the conspiracy that this P2P would be shipped from European and

African countries to Nassau and Freeport, the Bahamas, Martinique, Barbados and other countries, and thereafter would be smuggled into the United States by boat.

8(b). It was a further part of the plan and purpose of the conspiracy that George Azar, Roman Smolen, and others, who were captains of the boats in which the P2P was shipped from the Carribean countries, would smuggle the P2P into various ports of entry in Florida, including Fort Lauderdale.

8(c). It was a further part of the plan and purpose of the conspiracy that defendant Rosina Marie Papantonio a/k/a BB Papantonio and Richard Papantonio supervised the shipments of the P2P from the Bahamas to Florida by, among other things, coordinating the pick up of the P2P, the boat shipment, and the unloading of the P2P.

8(d). It was a further part of the plan and purpose of the conspiracy that defendant Linda Kravits would be in charge of the drivers into whose cars the P2P would be unloaded in Florida and then driven to other locations in Florida and to the Philadelphia area.

8(e). It was a further part of the plan and purpose of the conspiracy that defendants PATRICK DIXON, Linda Kravitz, George Azar, and others, with the assistance of Terrence Marmer, Albert Spielvogel, Frances Harpel, Robert Federa would be drivers of the organization and would transport P2P from Fort Lauderdale, Florida to other locations in Florida and to the Eastern District of Pennsylvania, including Philadelphia.

9. It was a further part of the plan and purpose of the conspiracy that various individuals would operate clandestine laboratories to manufacture methamphetamine from the

chemicals, including P2P, and equipment supplied by and through the conspiracy.

10. It was a further part of the plan and purpose of the conspiracy that the P2P-which would be re-distributed or used by the following defendants to manufacture additional methamphetamine-and the methamphetamine, would be sold and distributed to Joseph DiSantis, Jr., PATRICK DIXON, RICHARD FROST, MITCHELL LIEBERMAN, GERALD LAVIN, Linda Kravitz, William Catanese, Ralph DiFronzo, David Gomberg, ROBERT C.("R.C.") HARTLEY, Ivan Stevens, Eugene Cella, George Azar, ALEXANDER AHRTZEL, Frances Harpel, Sebastian Calabrese, Charles Woolam, a/k/a T-Bird Charlie and others.

11. It was a further part of the plan and purpose of the conspiracy that during July and August, 1981, Charles Ramsey, Frances Harpel, George Azar, MITCHELL LIEBERMAN, William Catanese, PATRICK DIXON, Joseph DiSantis, Jr., GERALD LAVIN, RICHARD FROST, ROBERT ("R.C.") HARTLEY, Linda Kravits, and others, would attempt to purchase P2P by, with and through other members of the conspiracy. However, the substance the co-conspirators purchased was, in fact, P1P, a non-controlled substance.

In violation of Title 21, United States Code, Section 846.

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

That on or about July 31, 1981, at Philadelphia, in the Eastern District of Pennsylvania

knowingly and intentionally did unlawfully attempt to possess with the intent to distribute approximately 28 gallons of phenyl-2-propanone (P2P), a Schedule II non-narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

In violation of Title 21, United States Code, Section 846.